(4)

NO. 90-813

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

HOUSTON LAWYERS' ASSOCIATION, *et al.*,
Petitioners,
v.
JIM MATTOX, *et al.*,
Respondents.

HARRIS COUNTY DISTRICT JUDGE SHAROLYN WOOD'S BRIEF IN OPPOSITION TO HOUSTON LAWYERS' ASSOCIATION'S PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether elected state judges are "representatives" within the scope of § 2(b) of the Voting Rights Act, 42 U.S.C. § 1973(b), and, if so, whether § 2(b) is constitutional as thus interpreted?

2. Whether independent overlapping county-wide judicial election districts are within the scope of § 2(b) of the Voting Rights Act and if so, whether § 2(b) is constitutional?

PARTIES

The participants in the proceedings below were:

Plaintiffs:

LULAC Local Council 4434
LULAC Local Council 4451
LULAC (Statewide)
Christina Moreno
Aquilla Watson
Joan Ervin
Matthew W. Plummer, Sr.
Jim Conley
Volma Overton
Willard Pen Conat
Gene Collins
Al Price
Theodore M. Hogrobrooks
Ernest M. Deckard
Judge Mary Ellen Hicks
Rev. James Thomas

Plaintiff-Intervenors:

Houston Lawyers' Association
Alice Bonner
Weldon Berry
Francis Williams
Rev. William Lawson
DeLoyd T. Parker
Bennie McGinty
Jesse Oliver
Fred Tinsley
Joan Winn White

Defendants:

Jim Mattox, Attorney General of Texas
George Bayoud, Secretary of State
Texas Judicial Districts Board

Thomas R. Phillips, Chief Justice, Texas Supreme Court
Mike McCormick, Presiding Judge, Court of Criminal Appeals
Ron Chapman, Presiding Judge, 1st Administrative Judicial Region
Thomas J. Stoval, Jr., Presiding Judge, 2nd Administrative Judicial Region
James F. Clawson, Jr., Presiding Judge, 3rd Administrative Judicial Region
John Cornyn, Presiding Judge, 4th Administrative Judicial Region
Robert Blackmon, Presiding Judge, 5th Administrative Judicial Region
Sam B. Paxson, Presiding Judge, 6th Administrative Judicial Region
Weldon Kirk, Presiding Judge, 7th Administrative Judicial Region
Jeff Walker, Presiding Judge, 8th Administrative Judicial Region
Ray D. Anderson, Presiding Judge, 9th Administrative Judicial Region
Joe Spurlock II, President, Texas Judicial Council
Leonard E. David

Defendants-Intervenors:

Judge Sharolyn Wood
Judge Harold Entz
Judge Tom Rickoff
Judge Susan D. Reed
Judge John J. Specia, Jr.
Judge Sid L. Harle
Judge Sharon Macrae
Judge Michael D. Pedan

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Because the *en banc* ruling of the Court of Appeals that § 2 of the Voting Rights Act does not apply to the election of state district judges is correct, Respondent/Intervenor Harris County District Judge Sharolyn Wood ("Judge Wood") respectfully opposes the Houston Lawyers' Association's ("HLA"'s) Petition for Writ of Certiorari in this case. Should this Court nevertheless deem the issues raised to be worthy of review, Judge Wood requests that the Court consider or remand to the Court of Appeals, unreached questions developed in the record of this case and that the Court refuse to review those matters outside the scope of this case which are raised in the HLA's Petition.

OPINIONS AND JUDGMENT BELOW

Judge Wood incorporates by reference the Houston Lawyers' Association's ("HLA's") statement of opinions and judgments below. HLA's Petition for Writ of Certiorari ("Petition") at 2. However, she objects to the HLA's inclusion in its statement of "Opinions Below" and in its appendix at pp. 304a-308a of a letter from Assistant Attorney General John Dunne, dated November 5, 1990 interposing an objection to the creation of fifteen additional district judgeships in Texas. That opinion letter is not part of the record of this case and, since it deals with the preclearance of new judicial districts in Texas under § 5 of the Voting Rights Act, is irrelevant to this § 2 case and is included solely to prejudice the outcome of this case.[1]

JURISDICTION

The decision of the Fifth Circuit was entered on September 28, 1990. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Federal question jurisdiction is appropriate since this case involves federal statutory and constitutional questions under § 2 of the Voting Rights Act, 42 U.S.C. § 1973; the Civil Rights Act of 1964, 42 U.S.C. § 1983; and the fourteenth and fifteenth amendments to the United States Constitution.

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1. The Court should be aware, however, that a proceeding has been filed by the Texas Attorney General to appeal the Justice Department's denial of preclearance. Given the almost surreptitious attack on the Court of Appeals' opinion, apparent in the Justice Department's letter, Judge Wood calls the Court's attention to the fact that the issues posed squarely here are being obliquely attacked in that proceeding.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves § 2 of the Voting Rights Act, 42 U.S.C. § 1973, set out at HLA's Pet. at 3-4; U.S. Const., amendments XIV and XV, app. at 5a-7a; §§ 7 and 7(a)(i) of the Texas Constitution of 1876, app. at 1a-2a; and, collaterally, § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, app. at 3a-5a.

STATEMENT OF THE CASE

i. Course of Proceedings

This case was brought in the United States District Court for the Western District of Texas, Midland Division, by the League of United Latin American Citizens ("*LULAC*") and certain named black and hispanic individuals. The Plaintiffs, Petitioners in this Court, claimed that Texas' constitutional and statutory system for electing district judges from county-wide districts violated the fourteenth and fifteenth amendments to the United States Constitution, 42 U.S.C. § 1983, and § 2 of the Voting Rights Act by diluting the votes of blacks and/or hispanics in 47 of Texas' most populous counties. The Plaintiffs subsequently withdrew their claims in all but ten counties and limited their claims in Haris County to blacks only and not hispanics. By Order dated March 1, 1989, the district court permitted the HLA and certain named black individuals to intervene as Plaintiffs on behalf of blacks in Harris County; it permitted certain named black individuals to intervene as Plaintiffs in Dallas County (the "Dallas County Plaintiff/Intervenors"); and it permitted District Judge Wood and Dallas

County District Judge Harold Entz ("Judge Entz") to intervene as Defendants.

The case was tried to the bench in Midland, Texas, beginning September 18, 1989. On November 8, 1989, the district court issued its Memorandum Opinion and Order (the "Opinion"). The Court rejected Plaintiffs' constitutional claims but held that Texas' system of electing state district judges diluted the votes of minorities in all target counties in violation of § 2 of the Voting Rights Act.

On January 2, 1990, without a hearing, the district court issued an Order (the "Order") enjoining the calling, holding supervising and certifying of elections for state district judges under Texas' judicial election system in the target counties and imposed its own Interim Remedial Plan. That Plan, which took effect immediately, on the last day on which filing was permitted for judicial races under Texas law, totally rewrote Texas' comprehensive judicial election system set out in the Texas Government Code and Texas Election Code. It adopted virtually *in toto* a remedial plan solicited by the district court and agreed upon by the Plaintiffs, HLA and Texas Attorney General Mattox without notice to the Defendant/Intervenors Judge Wood and Judge Entz.[2] The primary difference between the district court's Interim Remedial Plan and the Plaintiffs/Mattox Plan was the substitution of nonpartisan elections for partisan elections. Judge Wood strenuously opposed both the Interim Remedial Plan and the Plaintiffs/Mattox Plan on fourteenth and fifteenth amendment grounds, in part because both assigned

2. Petitioners' apparent surprise at the district court's Plan (Petition at 12-13, 24) is somewhat disingenuous since Petitioners participated in negotiation of the Plaintiffs/Mattox Plan and endorsed it by signature.

judges to legislative districts, with two judges to each Democratic/minority district and one to each Republican/white district. Defendants appealed both from the injunction and from the November 9 Opinion.

Following expedited oral hearing on April 30, 1990, a three-judge panel of the Fifth Circuit Court of Appeals ruled 2 to 1 in favor of the defense. The Court then ordered *en banc* review *sua sponte* and heard oral arguments on June 19, 1990. Of the thirteen judges who decided the case, twelve ruled that § 2 of the Voting Rights Act does not apply to state district judges.[3] A majority of seven judges, led by Judge Gee, held that § 2(b) of the Voting Rights Act (the vote dilution section) applies only to the election of "representatives" and therefore does not apply to judicial elections, thus overruling a previous Fifth Circuit panel opinion in *Chisom v. Roemer*, 839 F.2d 1056 (5th Cir), *cert. denied*, 488 U.S.____, 109 S. Ct. 390 (1988). Five judges, led by Judge Higginbotham, held that § 2(b) applies to judicial elections in general but that it does not apply to single-judge trial benches. Only Judge Johnson dissented. On November 21, 1989 the HLA timely filed its Petition for Writ of Certiorari.

ii. Statement of Facts

Judge Wood files this Statement of Facts to correct numerous serious misstatements of fact in the HLA's Petition. The HLA incorrectly claims that the Texas Constitution requires that state district judges be elected from districts no smaller than a county (Petition at 9) and that Texas' judicial election system is a numbered post, majority vote, "winner take all" judicial election system

3. The Plaintiffs did not appeal the district court's denial of their constitutional claims.

(Petition at 9), and it implies that each state district bench functions statewide by reason of statewide jurisdiction (Petition at 10). Contrary to Petitioners' implication, each state district court sits in a single-county or rural multi-county district with venue co-extensive with the electoral district, although jurisdiction technically extends to the State boundaries. Tex. Const. §§ 7 and 7(a)(f), App. at 1a-2a. In addition, Texas' Constitution § 7(a)(i) provides that district judge districts may be no smaller than a county *unless* a majority of the district's residents vote for smaller districts.[4] App. at 2a. Moreover, in inaccurately and incompletely characterizing Texas' judicial election system, Petitioners omit the fact that, although all Texas district courts are courts of general jurisdiction under the Texas Constitution, the district courts in the larger counties, including Harris County, are either statutorily or by agreement divided into four areas of specialized expertise: civil, criminal, family, and juvenile courts. Thus, district judges in the largest counties expressly run for and are elected to a specific civil, criminal, family, or juvenile specialty bench.

Petitioners also omit the fact that Texas has a partisan judicial election system. Under that system, both political parties hold primaries in accordance with the detailed requirements of the Texas Election Code. Candidates of each party run for specific courts; if no candidate receives a majority in the primary, the two leading candidates face each other in a runoff; the winner of each primary or

4. The Texas Constitution was amended in 1975 to include § 7(a)(i). One of the amendment's co-sponsors was then State Representative (now United States Representative) Craig Washington, a witness for the Plaintiffs in this lawsuit. See Pet. app. at 282a-283a. The district court concluded that the "apparent" rationale for § 7(a)(i) is "that District Judges should not be responsible to voters over an area smaller than an area over which they have primary jurisdiction." Pet. app. at 282a.

runoff then faces the other parties' candidates in the general election; and the winner of a plurality in the general election occupies the bench for four years. Each bench enjoys county-wide venue, jury selection, and docket equalization, and each judge enjoys independent authority as the sole decision-maker on each case that comes before him or her.

Not only do Petitioners mischaracterize the Texas district court system, they also grossly misrepresent the results of Texas state district judge elections.[5] Petitioners claim to have demonstrated that voting is "extremely racially polarized in Harris County." Petition at 11. To support this statement, Petitioners claim that "although 17 African American candidates have run for district judge in Harris County since 1980, only 2 won." Petition at 10-11. Petitioners further claim that white voters never gave more than 40% of their votes to black judicial candidates, while black voters gave 96% of their vote to black candidates. Petition at 11. Moreover, Petitioners claim, "Race also consistently outweighed party affiliation in district judge elections in Harris County." *Id.* Each of these statements either depends upon blatant statistical manipulation or is contradicted in the record.[6]

Petitioners' claim that they "demonstrated that voting is extremely racially polarized in Harris County" is mis-

5. At trial HLA presented only claims on behalf of blacks in Harris County, Texas' most populous county, and Judge Wood defended the Texas judicial election system against those claims. Accordingly, the factual and statistical claims about judicial voting patterns in the HLA's brief and in this brief are confined to Harris County.

6. In the Court of Appeals, Judge Wood urged several significant errors, regarding Plaintiffs' trial proof and the district court's evidentiary and legal findings. See appendix at 8a. In the unlikely event this Court reverses the Court of Appeals, remand would be necessary to present these issues—none of which were reached.

leading. Petitioners' expert, Dr. Richard Engstrom, analyzed only 17 selected contested black/white elections in Harris County since 1980. He ignored the three 1978 district judge elections in which blacks ran — and won — contested races against a white candidate. Two of those black judges have run — and won —every four years since 1978. Only one of those four races was contested: therefore, only that race was counted. In fact, blacks have run in 22 races in general elections for state district judge in Harris County since 1978 and have won 7 of those races — 4 contested and 3 uncontested — for a total success rate of 32% in all races, and 18% in contested races. *See* Exh. DW-1; R. 242. Moreover, 11 of the 15 losses were attributable to only four candidates: Weldon Berry, Sheila Jackson Lee, Freddie Jackson, and Matthew Plummer. Exh. DW-1. In addition, no black district judge candidate has lost in the Democratic primary since 1984. Exh. DW-2; R. 62. As to the 96% of their vote which black voters give to black candidates, the black vote is the same for white candidates so long as they are Democrats since 96% is the usual percentage of straight ticket Democratic votes cast by blacks in Harris County. TR. at 3-322. Also, in claiming that "[r]ace also consistently outweighed party affiliation in district judge elections in Harris County," Petitioners cite as proof the alleged fact that every white Democratic incumbent judge was reelected in 1986 while every black Democratic incumbent district judge lost the same election. Petition at 11. In fact, only *one* incumbent black Democratic district judge ran (and lost) a contested race in 1986 (newly appointed Judge Matthew Plummer), while two incumbent black judges ran uncontested races and won—Judges Thomas Routt and Jon Peavy. Exh. DW-1. Furthermore, although the percentage of black district judges currently sitting on the bench in Harris County is 5.1% of the total population of Harris County, as Petitioners state, blacks constitute only 3.8% of the attorneys in Harris County constitutionally qualified to run for state district judge.[7] Exh. D-4; R. 198. Thus, all of the facts which Petitioners cite to support their claim to have demonstrated "extreme racial polarization" in Harris County are either incorrect or manipulated.

Behind the HLA's Petition for Writ of Certiorari and not mentioned in that Petition, which properly focuses on statutory coverage, is an equally serious issue not reached by the Court of Appeals, of the proper standard of proof of vote dilution in partisan races. While the HLA's Petition poses a highly important statutory question, it is inaccurate and unfair to permit that question to be posed in the context of a seriously flawed statement of purported facts, which is actually designed to show that this case was correctly decided under the leading vote dilution case, *Thornburg v. Gingles*, 478 U.S. 30 (1986).

At trial Petitioners and Respondents urged and used different standards of proof of vote dilution. Petitioners confined their proof of alleged vote dilution in the target counties almost exclusively to two types of statistical proof — bivariate regression analysis and homogeneous precinct or "extreme case" analysis — which they used to show that in certain selected black/white races support for black judicial candidate rose as the per-

7. Judge Wood contended below that under the legal principle adopted by this Court in analogous Title VII cases, the relevant standard for measuring minority electoral success for an office open to only a small percentage of the electorate is the percentage of eligible candidates, not voters. *Wards Cove Packing Co. v. Atonio*, 109 S. Ct. 2115 (1989) and *City of Richmond v. J. A. Croson Co.*, 109 S. Ct. 706 (1989).

centage of blacks in the precinct rose.[8] They excluded as irrelevant and prejudicial all evidence of actual practical local factors affecting the outcome of judicial races. By contrast, the Defendants' statistical expert, Dr. Delbert Taebel, analyzed the actual factors in Texas judicial races, relying for his statistical analysis on multivariate regression analysis, which factors political affiliation, as well as race, into the analysis of electoral results. Using this approach, Dr. Taebel established in undisputed testimony that Harris County voting is very competitive between Democrats and Republicans and election results are unpredictable. TR. 5-226. In addition, Judge Mark Davidson offered expert testimony on a race-by-race and election-by-election basis as to the totality of circumstances, which led to his conclusion that race was a relatively unimportant variable in Harris County judicial elections. Both Defendants' experts testified to the following factors: There is extensive straight-party voting. TR. 5-183; TR. 5-228. The swing voters, who constitute only 10-20% of the judicial voters, are a critical factor and vote in a variety of different ways. TR. 5-228-229. However, swing voting in Harris County has virtually nothing to do with race. TR. 5-232-233. The district court adopted the Plaintiffs' standard of proof and expressly rejected the Defendants' standard of proof and evidence as "irrelevant." Pet. app. at 222a.

8. Races where black Republicans won or lost without the support of the black community, largely because of straight ticket voting, were trteated as anomalies and ignored.

REASONS FOR DENYING THE WRIT

I. THE CLAIM THAT § 2(b) OF THE VOTING RIGHTS ACT APPLIES TO STATE DISTRICT JUDGES HAS BEEN RESOUNDINGLY REJECTED BY THE FIFTH CIRCUIT *EN BANC*.

This case has been fully briefed and argued below and was carefully considered and decisively ruled upon *en banc* by the Fifth Circuit Court of Appeals. The overwhelming consensus of that Court—which is perhaps this country's leading Court of Appeals in interpreting civil rights cases—is that state district judicial elections are beyond the scope of § 2(b) of the Voting Rights Act. Since the Court of Appeals had before it a full and complete record, since all constitutional and statutory issues have been fully explored by that Court *en banc*, and since the Court has overwhelmingly held that the statute does not apply and has set forth its reasons, there is no need for this Court to reconsider the same question that the Fifth Circuit has so resoundingly answered.

The Court should note and reject Petitioners' facile representation that "Section 5 and Section 2 have traditionally been interpreted to have concurrent application." That is untrue. In *South Carolina v. Katzenbach*, 383 U.S. 301, 316 (1966) a Section 5 case, Chief Justice Warren carefully avoided that very question; and in Senate Report 97-417, Congress stated that an analogy between Sections 2 and 5 of the Voting Rights Act is "fatally flawed for several reasons." S. Rep. 97-417 at 42, 1987 U.S. Cong. & Admin. News at 177, 219-220. Judge Wood will discuss these issues more fully in response to the Petition for Writ of Certiorari filed by the original Plaintiffs.

II. IF THE COURT GRANTS CERTIORARI TO REVIEW THE APPLICATION OF § 2 OF THE VOTING RIGHTS ACT TO THE JUDICIARY, IT SHOULD GRANT CERTIORARI IN THIS CASE AND DENY CERTIORARI IN *CHISOM V. ROEMER.*

Petitioners have rushed to seek certiorari in *Chisom v. Roemer*, a § 2 case from Louisiana raising, like LULAC, the issue of the applicability of § 2 of the Voting Rights Act to judicial elections.[9] *See* Petition at 14. *Chisom* was the only other § 2 judicial election case to have been decided by the Fifth Circuit before *LULAC*. *Chisom v. Roemer*, 839 F.2d 1056 (5th Cir. 1988). It was expressly overruled by *LULAC*. This Court previously denied certiorari in *Chisom*, 488 U.S.____, 109 S. Ct. 390 (1988). Nothing new has been added to the *Chisom* record which would justify this Court's granting the Petition for Writ of Certiorari it previously denied. Since *Chisom* has been decisively overruled by the Fifth Circuit *en banc* and the case on remand was dismissed on the authority of LULAC, this Court should review *LULAC* if it reviews either case. It should not review *Chisom* and thereby complicate presentation of *LULAC*.

III. IF THE COURT GRANTS CERTIORARI IN THIS CASE IT SHOULD REVIEW ALL THE ISSUES RAISED OR REMAND UNREACHED STANDARD OF PROOF AND LEGAL ISSUES.

This case presents three vital questions, each of which has both statutory and Constitutional implications. The

9. The same national counsel represented Plaintiffs in *LULAC* and *Chisom*.

first two are variants on the same question: (1) whether § 2(b) applies to state judicial elections at all and (2) whether § 2 applies to the election of judges to independent benches of general jurisdiction; the third asks whether a standard of proof of vote dilution is proper if it excludes as "legally incompetent" virtually all evidence of the actual local factors operative in judicial elections and determines the existence of discrimination solely on the basis of statistical evidence of minority losses. The Fifth Circuit answered both of the first two of these questions affirmatively. Since it held that § 2 does not apply to judicial elections, it failed to reach the third issue. If this Court affirms the Court of Appeals, this issue will have to be resolved later. If, however, the Court should reverse and decline to review this important third issue it will remain an unresolved issue which should be addressed in some fashion. Respondent Judge Wood therefore urges the Court at least to review, if not to decide, the standard of proof issue if it decides to grant certiorari in this case. She has therefore listed in the Appendix at 8a additional questions presented in the case which were not reached by the Fifth Circuit

Similarly, the subsidiary issues which have been briefed and argued below will require resolution should this case be reviewed. For example, the question whether the principle of one-man, one-vote applies to judicial elections is integral to this case and has already shown its practical significance. Although § 2 derives its legitimacy from the fourteenth and fifteenth amendments to the United States Constitution, and although the principle of one-man, one-vote was first enunciated and applied to the election of "representatives" in *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362 (1964), a fourteenth amend-

ment and vote dilution case, both the Plaintiffs and the district court, on the authority of *Wells v. Edwards*, 347 F. Supp. 453 (M.D. La. 1972) *aff'd*, 409 U.S. 1095, 93 S. Ct. 904 (1973), denied that the principle of one-man, one-vote applies to judicial elections. They thus felt free to devise a remedial plan, for instance, which assigned two state judicial judges to each minority/Democratic district and one to each white/Republican district. Judge Wood sees a clear fourteenth amendment problem in that "solution." Indeed, one wonders how § 2 vote dilution can be measured at all if one man, one vote does not require essentially equal numbers of voters in judicial electoral districts, if only for comparative purposes.[10] The subsidiary issues raised below, therefore, should either be addressed by this Court if it decides to grant certiorari or made the subject of remand.

CONCLUSION

For the foregoing reasons, Respondent Harris County District Judge Sharolyn Wood requests that the Court deny the Houston Lawyers' Association's Petition for Writ of Certiorari or, in the alternative, that it grant certiorari to determine only those issues, and all of those issues which are properly presented by the record in this case.

10. Judge Wood agrees that the principle of one-man, one-vote does not apply to judicial elections--but only because judges are servants of the people, not representatives, and judicial districts therefore are not drawn to ensure equal representation of racial groups but to equalize case load and promote the fair and efficient administration of justice.

Respectfully submitted,

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APPENDIX

§ 7. *Judicial Districts; District Judges; terms or sessions; absence, disability or disqualification of Judge*

Sec. 7. The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution. Each district judge shall be elected by the qualified voters at a General Election and shall be a citizen of the United States and of this State, who is licensed to practice law in this State and has been a practicing lawyer or a Judge of a Court in this State, or both combined, for four (4) years next preceding his election, who has resided in the district in which he was elected for two (2) years next preceding his election, and who shall reside in his district during his term of office and hold his office for the period of four (4) years, and who shall receive for his services an annual salary to be fixed by the Legislature. The Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. He shall hold the regular terms of his Court at the County Seat of each County in his district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each Court as it may deem necessary.

The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

§ 7a. *Judicial Districts Board; reapportionment of judicial districts*

Sec. 7a. (a) The Judicial Districts Board is created to reapportion the judicial districts authorized by Article V, Section 7, of this constitution.

. . .

(i) The legislature, the Judicial Districts Board, or the Legislative Redistricting Board may not redistrict the judicial districts to provide for any judicial district smaller in size than an entire county except as provided by this section. Judicial districts smaller in size than the entire county may be created subsequent to a general election where a majority of the persons voting on the proposition adopt the proposition "to allow the division of _____ County into judicial districts composed of parts of _____ County." No redistricting plan may be proposed or adopted by the legislature, the Judicial Districts Board, or the Legislative Redistricting Board in anticipation of a future action by the voters of any county.

§ 1973c. *alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court*

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(a) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the

effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment to person shall be denied the right to vote for failure to comply with cedure: Provided, That such qualification, prerequisite, cedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate and expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Due Process Clause of Section1 are set out in this volume and the following volume. See preceding volume for materials pertaining to the Citizenship and Privileges and Immunities Clauses of that section and the volume containing the end of the Constitution for materials pertaining to the Equal Protection Clause of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or

other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV—UNIVERSAL MALE SUFFERAGE

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

OTHER QUESTIONS PRESENTED

1. Whether the concept of one-man, one-vote applies to judicial elections?

2. Whether the eligible pool of minority lawyers or that of minority voters is the appropriate reference point for measuring minority success in judicial elections?

3. Whether two of the three threshold *Gingles* factors in vote dilution cases—racially polarized voting and white racial bloc voting—are proved by abstract statistical inquiry, with all other inquiry into the actual local factors determining the results of elections being irrelevant?

4. Whether a court-ordered remedial plan for vote dilution that assigns two judges to each minority/majority district and one judge to each white/majority district violates the fourteenth and fifteenth amendments to the United States Constitution?